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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MGR AND SONS LAND DEVELOPMENT COMPANY, LLC,

Plaintiff and Appellant,

v.

THE JAIME AND IRENE SIREBRENIK TRUST et al.,

Defendants and Respondents.

E062234

(Super.Ct.No. RIC1111688)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Daniel A. Ottolia, Judge. Affirmed.

J. Scott Bennett for Plaintiff and Appellant.

Gartenberg Gelfand Hayton and Aaron C. Gundzik for Defendants and Respondents.

I. INTRODUCTION

Plaintiff and appellant, MGR and Sons Land Development Company, LLC (MGR), appeals from a judgment entered following an order granting summary judgment in favor of defendants and respondents, the Jamie and Irene Sirebrenik Trust (the Trust), Money Masters, Inc., Gerry Schwarzblatt, and Jaime Sirebrenik (defendants), on MGR's third amended complaint for breach of an oral contract. MGR alleged defendants breached an oral agreement to modify the terms of a $1.3 million promissory note secured by a deed of trust on MGR's 51-acre vineyard in the Temecula Valley Wine Country (the property). The lenders acquired the property in a May 2011 foreclosure sale.

The Trust was one of four trusts that were the lenders on the note; Schwarzblatt and Sirebrenik were the trustees for the lenders; and Money Masters, Inc. was apparently an agent for the lenders. The parties disputed whether they entered into an oral agreement to modify the note and deed of trust, and presented conflicting evidence concerning the terms they discussed and agreed upon. MGR claimed the parties orally agreed to modify the note in August 2008 by extending its maturity date to October 15, 2010, and by deferring fifty percent of its monthly $14,895 interest-only payments to October 15, 2010.

Defendants claimed they reached an oral agreement with MGR to modify the note during a meeting on November 17, 2009, but the agreement was expressly made subject to being put in a signed written agreement, and undisputed evidence showed that

defendants never signed such an agreement. The November 17 agreement would have extended the maturity date of the note to October 15, 2010, but would have deferred far lesser portions of the monthly interest payments due on the note to the new maturity date.

Summary judgment was granted on the ground that any oral agreement to modify the note and deed of trust was invalid based on the statute of frauds (Civ. Code, §§ 1624, 1698) and on the additional ground that MGR did not fully perform under the terms of any oral modification agreement. Undisputed evidence showed that, as of October 15, 2010, MGR had paid less than all of the deferred interest and none of the $1.3 million principal. MGR made its last payment on the note in December 2009 and, by its own admission, was in arrears on any oral modification by early 2010.

On appeal, MGR claims there were triable issues concerning whether defendants were estopped from asserting the statute of frauds as a defense to MGR's breach of oral contract claim. MGR argues it partially performed the parties' August 2008 oral agreement by paying monies to defendants in November and December 2009 in reliance on the oral modification agreement. Finally, MGR claims reversal is required because the trial court did not rule on any of MGR's evidentiary objections, though the objections were not in the format required by rule 3.1354 of the California Rules of Court.

We affirm. We agree with the trial court that any oral agreement to modify the note and deed of trust was invalid under Civil Code sections 1624 and 1698. We also conclude that defendants were not estopped from asserting the statute of frauds as a defense to MGR's breach of oral contract claim, and MGR forfeited its evidentiary

objections by failing to put them in the proper format and by failing to renew them on appeal. Further, undisputed evidence showed that MGR did not fully comply with the terms of any oral modification agreement, including the one it claims the parties entered into in August 2008. Thus, summary judgment was properly granted in favor of defendants.[1]

II. STANDARD OF REVIEW

"The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute. [Citation.]" (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 843.) Summary judgment is required to be granted when all of the papers submitted show there are no triable issues of any material fact and the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) "'The first step in analyzing a motion for summary judgment is to identify the issues framed by the pleadings. It is these allegations to which the motion must respond by showing that there is no factual basis for relief or defense on any theory reasonably contemplated by the opponent's pleading.' [Citation.]" (*McCaskey v. California State Automobile Assn.* (2010) 189 Cal.App.4th 947, 957.)

A defendant moving for summary judgment has the burden of showing that each cause of action alleged in the plaintiff's complaint has no merit, and the defendant meets this burden if it makes a prima facie evidentiary showing that one or more elements of

[1] MGR has not filed an appellant's reply brief.

each cause of action cannot be established or is subject to a complete defense. If the defendant makes this showing, the burden shifts to the plaintiff to produce evidence demonstrating the existence of a triable issue of material fact. (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at pp. 849-850; Code Civ. Proc., § 437c, subd. (p)(2).)

On appeal following an order granting summary judgment, we liberally construe the losing party's evidence while strictly scrutinizing the moving party's evidence. (*McCaskey v. California State Automobile Assn.*, *supra*, 189 Cal.App.4th at pp. 956-957.) We review the entire record de novo, considering "all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained." (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.) Because none of MGR's evidentiary objections were sustained and, for the reasons we explain *infra*, MGR has forfeited its evidentiary objections on appeal, we consider all of the evidence submitted on the motion.

III. FACTS AND PROCEDURAL BACKGROUND

A. *The Evidence Submitted on the Summary Judgment Motion*

1. Undisputed and Disputed Facts

In October 2007, the Trust and the other lenders loaned MGR $1.3 million pursuant to a note secured by a deed of trust on the property. The note accrued interest at the rate of 13.75 percent per annum, required MGR to make monthly "interest only" payments of $14,895.83, and the $1.3 million principal balance was due in full on

October 15, 2008. If MGR failed to make any of the required payments on the note, the lenders were entitled to foreclose on the property under the deed of trust.

In August 2008 and again in March and April 2009, MGR and the lenders signed written agreements modifying the terms of the note. In August 2008, MGR and the lenders agreed in writing to extend the maturity date of the note to April 15, 2009, and in March and April 2009, they agreed in writing to extend the maturity date of the note to October 15, 2009. The two written modification agreements state that, other than the extended maturity date, "[a]ll other terms and conditions of said Note will prevail."

MGR did not make the $14,895.83 monthly interest payment when it was due on August 15, 2009. In a letter to defendant Money Masters, Inc. dated August 18, 2009, MGR's attorney, John P. O'Connell, requested a further extension of the note to October 15, 2010, and a reduction in the interest rate.

In a second letter to defendant Money Masters, Inc. dated November 10, 2009, Mr. O'Connell proposed different terms for modifying the note: (1) the interest rate would remain at 13.75 percent, but MGR would pay $7,447.77, or one-half of the monthly interest accruals of $14,895.83, on the 15th of each month, (2) MGR would pay the $14,895.83 interest payment that was due on August 15, 2009, "with the extension of this note," and (3) the principal balance plus all unpaid interest would be due and paid in full on October 15, 2010. George Rabrenovich and his wife Marija Rabrenovich own MGR.

On November 17, 2009, George Rabrenovich, on behalf of MGR, and defendant Gerry Schwarzblatt, representing the lenders, met to discuss MGR's proposed additional

modification of the note. The parties dispute what was discussed at the November 17 meeting, however, and also dispute whether, and if so when, they reached an oral agreement to extend the maturity date of the note to October 15, 2010, and otherwise modify the terms of the note and deed of trust.

Defendants claim that, at the November 17, 2009, meeting, Schwarzblatt and Rabrenovich orally agreed to modify the note, but the agreement was expressly made subject to being reduced to a written modification agreement. MGR acknowledges that a meeting occurred on November 17, 2009, but claims the parties reached a different agreement on August 28, 2008, that "allowed for the original contract payment of $14,895 [to] be cut in half." Additionally, MGR claims the parties agreed, "in 2010," that MGR "would continue the $7,447.50 and the deferred interest would be due with the principal balloon" on October 15, 2010.

MGR made its last payment on the note in December 2009, and MGR never paid all of the deferred interest or any of the $1.3 million principal balance of the note. MGR claims that, "depending on what month in 2008 the accounting is done at the 50% rate, [and] after [its] payments in November and December 2009," MGR "paid in advance several months into 2010." MGR never paid all of the deferred interest or any of the principal, however.

On March 19, 2010, a notice of default was recorded against the property. On April 26, 2011, a notice of trustee's sale was recorded, scheduling the sale for May 20, 2011. The notice of sale was published in a local newspaper on April 29, May 6, and

May 13, 2011. The lenders were the only bidder at the May 20, 2011, trustee's sale, tendering a full credit bid of just under $1.7 million for the property in exchange for a trustee's deed.

2. Disputed Evidence Concerning the Alleged Oral Modification Agreements

(a) *Defendants' Evidence*

According to Schwarzblatt, on November 17, 2009, he and Rabrenovich "orally agreed to terms for extending the loan, which were to be memorialized in writing." They "wrote out a term sheet," which was expressly made, "'subject to signing the extension as discussed with Mr. O'Connell [MGR's attorney].'" The Trust prepared a written loan extension agreement and faxed it to Rabrenovich on November 24, 2009. On December 2, 2009, Marija Rabrenovich signed the agreement on behalf of MGR, but the lenders did not sign the agreement. According to Schwarzblatt, the lenders did not sign the agreement because, by the time MGR signed it, MGR had not paid all of the amounts due under the November 17 agreement.

Schwarzblatt acknowledged that, on November 17, Rabrenovich wrote a check for $15,895.83, for the interest payment of $14,895.83 that was due on August 15, 2009, plus $1,000 "to cover the Trust's legal fees for preparing the loan extension agreement that MGR had requested." The written agreement that the Trust prepared and faxed to Rabrenovich would have required MGR to pay the $15,895.83 it paid on November 17, 2009, plus $11,916.51 on November 30, 2009, plus $7,447.77 on December 15, 2009, plus monthly payments of $10,426.94 ($7,447.77 + $2,979.17), beginning on January 15,

2010, and continuing on the 15th of every month until October 15, 2010, when the entire $1.3 million principal balance plus all accrued and unpaid interest would be due and payable in full.

Schwarzblatt explained that the lenders orally agreed to defer one-half of the monthly interest payments originally due on and after September 15, 2009, to October 15, 2010. The $11,916.51 sum due on November 30, 2009, represented $4,468.74 in late charges for the August 15, September 15, and October 15, 2009, interest payments ($1,489.58 per month for three months), plus $7,447.77 for one-half of the November 15, 2009, interest payment ($4,468.74 + $7,447.77 = $11,916.51). MGR was to pay an additional $7,447.77 on December 15, 2009, and, beginning on January 15, 2010, make monthly payments of $10,426.94. The $10,426.94 due on January 15, 2010, consisted of one-half of the interest payment due on January 15, 2010, or $7,447.77, plus $2,979.17, for one-tenth of the two $14,895.83 interest payments due on September 15, 2009, and October 15, 2009, totaling $29,791.66, amortized over 10 months ($29,791.66 /10 = $2,979.17). Successive monthly payments of $10,426.94 would cover half of that month's interest payment, plus the deferred September 15 and October 15, 2009, interest payments. The other one-half of the monthly interest payments, beginning with the November 15, 2009, interest payment, were to be deferred and paid in full with the $1.3 million principal balance on October 15, 2010. On December 8, 2009, MGR paid the lenders $7,447.77, and made no further payments on the note.

(b) *MGR's Evidence*

According to Rabrenovich, he and defendants "made an agreement on August 28, 2008 that allowed for the original contract payment of $14,895.00 [to] be cut in half." He claimed that the $15,895 amount he paid the lenders on November 17, 2009, made the monthly interest payments "current through October 15, 2009," and the $1,000 portion of the $15,895 amount was the cost defendants "required for the extension." According to Rabrenovich, "[a]ll through 2009 the rate paid was $7,447.50 [per month]," "[d]efendants agreed this made [the loan] current," and defendants "cashed all checks in the amount of $7,447.50 without objection."

Rabrenovich explained that: "In our phone conversations and at the November 17, 2009 meeting Mr. Schwarzblatt and Mr. Sirebrenik said they agreed to me continuing on into 2010 at the $7,447.50 rate. We then discussed if this half rate of $7[,]447.50 is applied going back to October 15, 2008 when I was paying double, i.e. $14,895.00, I was current on this basis. Now, these two gentlemen did not want to give up any ground and admit that recalculating my monthly payments at the 50% level paid me ahead, not just current. Therefore, they insisted I pay $14,895.00, plus $1,000.00 for the extension, plus pay a $7,447.50 payment when the signed extension was mailed in. My wife Marija Rabrenovich signed the extension on December 2, 2009 and enclosed the $7,447.50 payment. Therefore, depending on what month in 2008 the accounting is done at the 50% rate, after these payments in November and December 2009, I am ahead of the game and paid in advance several months into 2010."

Rabrenovich claimed his wife signed the extension agreement that the Trust prepared because they had "no choice . . . it was out of pressure and duress." Rabrenovich denied he agreed to pay any late charges for the August, September, and October 2009 payments, or to pay the September and October interest payments in 10 monthly installments of $2,979. He also denied he agreed to make any monthly payments higher than $7,447.50, and claimed that he never received a copy of the notice of default or any other foreclosure-related documents at his Temecula post office box address. He claimed that the "IRS form 1098" that the lenders gave him for 2009 showed he paid $119,160 in interest in 2009, and "this should be the superior evidence as to what our agreement was, not what they are now saying to clean up and legitimatize their foreclosure."[2]

B. *Plaintiff's Complaint for Breach of Oral Contract*

In its operative third amended complaint filed in December 2012, MGR alleged causes of action for constructive fraud (first), breach of oral contract (second), and breach of the covenant of good faith and fair dealing (third). After defendants' demurrer to the first and third causes of action was sustained, without leave to amend, and the trial court granted defendants' motion to strike plaintiff's prayer to void the trustee's sale, for attorney fees, and for punitive damages, the third amended complaint was limited to its

[2] The sum of $119,160 equals $14,895 times eight, and is consistent with MGR paying eight monthly interest payments of $14,895 in 2009, through August 15, 2009. This, however, would not account for the $7,447.77 payment that defendants acknowledge MGR made on December 8, 2009.

second cause of action for breach of oral contract, and MGR's recovery was limited to compensatory damages.

MGR alleged that, on or about July 20, 2009, in the City of Beverly Hills, defendants "orally promised and sold" a one-year extension on the due date of the loan to October 15, 2010.[3] MGR alleged it made all monthly "interest-only payments" of $14,895 on the loan, until July 2009. In July 2009, MGR asked defendants to modify the loan because MGR could not afford to make the monthly interest payments and pay the $1.3 million principal balance by October 15, 2009. MGR alleged "[d]efendants agreed to reduce the monthly payments by 50%, reducing the payment to $7,400.00 each month commencing July 1st, 2009," and agreed to extend the loan maturity date to October 15, 2010, provided that MGR "immediately" paid defendants $14,800. On a later date, defendants asked MGR to pay an additional $1,000 for the loan modification and extension. MGR paid the $14,800, plus the additional $1,000, to defendants at their Los Angeles office, but "[w]hile at [d]efendants' office," defendants requested "'another $14,800.00' by stating 'you have to make up the $7,400.00 we forgave for each of the last two months, July and August of 2009.'" "Desperate to save his property, [MGR] was forced to agree" and wrote defendants a check for an additional $14,800.

MGR alleged it paid defendants a total of $30,600 ($14,800 x 2 plus $1,000) "for the promised extension," but "[s]ometime later, in the Fall of 2010," defendants "gave

[3] MGR acknowledged that the maturity date of the note had previously been extended to October 15, 2009.

verbal notice" to MGR that they would no longer honor the extension. As a result of defendants' breach of the parties' July 2009 oral loan modification agreement and the foreclosure, MGR alleged it lost (1) approximately $2 million in "net profit" on the sale of the property, which it claimed was worth $5 million, (2) the $30,600 it paid for the loan modification, and (3) an additional $150,000 it spent to subdivide the 51-acre property into four parcels.

C. *The Order Granting Summary Judgment*

Defendants moved for summary judgment in May 2014, claiming MGR could not prevail on its breach of oral contract claim for several reasons, including any oral contract to modify the note and deed of trust was invalid under the statute of frauds, and MGR "was admittedly in default at the time of the alleged oral modification, and . . . never cured its default." The trial court agreed and granted the motion on these two independent grounds.

IV. DISCUSSION

A. *The Oral Modification Agreement Was Subject to the Statute of Frauds*

Contracts described in Civil Code section 1624 are invalid unless they "or some note or memorandum" of them are in a writing and subscribed by the party to be charged or its agent. (Civ. Code, § 1624; *Secrest v. Security National Mortgage Loan Trust 2002-2* (2008) 167 Cal.App.4th 544, 552 (*Secrest*).) The party to be charged is "'"the party to be charged in court with the performance of the obligation, i.e., the *defendant* in the action brought to enforce the contract."'" (*Secrest*, *supra*, at p. 552.) Here, defendants

are the parties to be charged with performing any oral agreement to modify the terms of the note and deed of trust. The Trust was one of the lenders, and the other defendants were acting as agents on behalf of the lenders.

Civil Code section 1624 provides, in pertinent part, that "[a]n agreement . . . for the sale of real property, or of an interest therein" is invalid unless in writing and subscribed by the party to be charged or its agent. (Civ. Code, § 1624, subd. (a)(3).) Thus, a note and deed of trust on real property securing the borrower's performance under the terms of the note are contracts subject to the statute of frauds. (*Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1503 (*Rossberg*); *Secrest*, *supra*, 167 Cal.App.4th at p. 553.) Additionally, Civil Code section 1698, subdivision (a) states: "A contract in writing may be modified by a contract in writing." Thus, courts have concluded that "[a]n agreement to modify a contract that is subject to the statute of frauds is also subject to the statue of frauds." (*Secrest*, *supra*, at p. 553; *Rossberg*, *supra*, at p. 1503.) It follows that a loan forbearance agreement in which a lender agrees not to foreclose on real property securing the loan, provided the borrower satisfies certain conditions, is subject to the statute of frauds because it purports to modify the original promissory note and deed of trust. (*Secrest*, *supra*, at p. 553; *Rossberg*, *supra*, at p. 1503.)

Here, any oral agreement the parties entered into would have required the lenders to defer collecting some of the interest on the note, extend the maturity date of the note, and defer foreclosing on the real property if the modified terms of the note were met.

Thus, any such oral agreement was invalid unless it was memorialized in a writing and signed by the party or parties to be charged, or their agents. (*Secrest*, *supra*, 167 Cal. App.4th at pp. 552-554; *Rossberg*, *supra*, 219 Cal.App.4th at p. 1503; Civ. Code, §§ 1624, subd. (a)(3), 1698, subd. (a).) Defendants presented undisputed evidence that no oral agreement to modify the note and deed of trust was ever memorialized in a writing signed by any of the lenders or their agents, including defendants. Defendants thus met their burden of showing that the statute of frauds was a complete defense to MGR's breach of the oral contract claim. (Code Civ. Proc., § 437c, subd. (c).)

B. *Defendants Are Not Estopped from Asserting the Statute of Frauds*

MGR claims it raised a triable issue of fact concerning whether defendants were estopped from asserting the statute of frauds as a defense to MGR's breach of oral contract claim. We disagree.

To be sure: "Part performance allows enforcement of a contract lacking a requisite writing in situations in which invoking the statue of frauds would cause unconscionable injury. [Citation.] '[T]o constitute part performance, the relevant acts either must "unequivocally refer[]" to the contract [citation], or "clearly relate" to its terms. [Citation.] Such conduct satisfies the evidentiary function of the statute of frauds by confirming that a bargain was in fact reached. [Citation.]' [Citation.] In addition to having partially performed, the party seeking to enforce the contract must have changed position in reliance on the oral contract to such an extent that application of the statute of

frauds would result in an unjust or unconscionable loss, amounting in effect to a fraud. [Citations.]" (*Secrest, supra,* 167 Cal.App.4th at p. 555.)

MGR argues its November and December 2009 payments on the note constituted part performance of an oral agreement to modify the terms of the note to prevent defendants from asserting the statute of frauds as a defense to the agreement. But "'[t]he payment of money is not "sufficient part performance to take an oral agreement out of the statute of frauds" [citation], for the party paying money "under an invalid contract . . . has an adequate remedy at law."' [Citations.]" (*Secrest, supra,* 167 Cal.App.4th at pp. 555-556.) MGR does not claim it changed its position in reliance on any oral agreement, in any way other than by making the November and December 2009 payments. Thus, MGR's part performance is insufficient to bring any oral loan modification agreement out of the statute of frauds.

C. *Undisputed Evidence Shows MGR Never Fully Performed the Alleged Oral Agreement to Modify the Note and Deed of Trust*

The trial court granted summary judgment on the additional ground that, "[e]ven if the purported oral loan modification were enforceable, MGR's admitted default also prevents it from prevailing" on its cause of action for breach of oral contract. "'It is elementary a plaintiff suing for breach of contract must prove it has performed all conditions on its part or that it was excused from performance. [Citation.]' [Citation.] Thus, '[o]ne who himself breaches a contract cannot recover for a subsequent breach by the other party.' [Citation.]" (*Plotnik v. Meihaus* (2012) 208 Cal.App.4th 1590, 1602.)

Indeed, undisputed evidence shows that MGR never paid all of the deferred interest on the note, or any of the $1.3 million in principal, by October 15, 2010, the date MGR admitted that all of the deferred interest and principal were due. Thus, defendants were entitled to summary judgment on MGR's breach of oral contract claim, as a matter of law.

D. *MGR Has Forfeited Its Evidentiary Objections on Appeal*

Lastly, MGR claims the judgment must be reversed on the sole basis that the trial court failed to rule on either party's evidentiary objections. We disagree.

California Rules of Court, rule 3.1354 requires that evidentiary objections on a motion for summary judgment must be set forth in a separate document filed with the court, and include a proposed order that provides places for the court to indicate whether it sustained or overruled each objection. MGR did not comply with this rule. Instead, it submitted its evidentiary objections in its "Separate Statement of Undisputed Material Facts" in which it also stated whether defendants' statements of undisputed facts were disputed or undisputed. MGR also failed to submit a proposed order providing places for the court to rule on each evidentiary objection.

Because MGR did not comply with California Rules of Court, rule 3.1354, the trial court did not abuse its discretion in failing to rule on MGR's objections. (*Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1, 8-9.)[4] As *Hodjat*

[4] The order granting summary judgment states that the court "considered all of the evidence . . . except that to which objection was sustained," but this appears to be a

[footnote continued on next page]

explained, "[t]he rules requiring evidentiary objections to be filed separately and not repeated in the separate statement are to allow the trial court to consider each piece of evidence and all of the objections applicable to that piece of evidence separately. . . . [I]nterposing objections into the separate statement defeats the goal of allowing the trial court to quickly and efficiently determine what particular piece of evidence is admitted and what is not. This is because the separate statement is focused on individual facts, which may be supported by the same or different pieces of evidence. A trial court would be forced to wade through all of the facts in order to rule on a particular piece of evidence." (*Id.* at p. 9.)

Furthermore, when, as here, "the trial court fails to rule expressly on specific evidentiary objections, it is presumed that the objections have been overruled, the trial court considered the evidence in ruling on the merits of the summary judgment motion, and the objections are preserved on appeal." (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 534.) "[T]he burden [is] on the objector to renew the objections in the appellate court." (*Ibid*., fn. omitted.) MGR has not renewed any of its evidentiary objections on appeal. Nor has MGR explained how or why sustaining any of its objections would require reversal of the judgment. Thus, MGR has forfeited its evidentiary objections on appeal. Like the trial court, this court is not required to "wade through all of the facts" and the

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boilerplate statement. The record does not indicate that the court sustained or overruled any of MGR's evidentiary objections.

evidence submitted in support of the facts in order to rule on the admissibility of particular items of evidence. (See *Hodjat v. State Farm Mutual Automobile Ins. Co.*, *supra*, 211 Cal.App.4th at pp. 8-9.)

Nonetheless, the essential facts are undisputed and show that defendants are entitled to summary judgment as a matter of law. Even if the parties entered into an oral agreement to modify the note and deed of trust, and even if that oral agreement was enforceable, undisputed evidence shows that MGR never complied with the terms of any oral agreement to modify the note and deed of trust. MGR never paid all of the deferred interest and principal on the loan when the principal and interest were, by MGR's admission, due on October 15, 2010. For this reason alone, summary judgment was properly granted.

V. DISPOSITION

The judgment is affirmed. The parties shall bear their respective costs on appeal. (Cal. Rules of Court, rule 8.278.)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

SLOUGH
J.